

EXHIBIT E

EXHIBIT 5

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In Re:)
)
) No. 2:21-cv-00563-JCC
VALVE ANTITRUST LITIGATION)
)

VIDEO-RECORDED DEPOSITION UPON ORAL EXAMINATION OF
SCOTT LYNCH

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9:11 A.M.
THURSDAY, OCTOBER 12, 2023
701 FIFTH AVENUE, SUITE 5100
SEATTLE, WASHINGTON

Reported by: Tami Lynn Vondran, CRR, RMR, CCR/CSR
WA CCR #2157; OR CSR #20-0477; CA CSR #14435

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1 software at Valve.

2 Q. The software that you referred to earlier by a
3 code name of Gazelle.

4 A. So when did somebody -- at what point was a
5 group -- a team working on a project called Gazelle and
6 writing code?

7 Q. Sure. Let's start there.

8 A. I don't know.

9 Q. You don't recall?

10 A. I really don't. I don't recall. It would
11 have been a long time ago.

12 Q. When did Valve decide to distribute games for
13 third parties?

14 A. When did we decide? We decided, I think, when
15 we did our first third-party game deal, which I think
16 was in 2005.

17 Q. Steam had been released prior to that; right?

18 A. Yes. Steam had been announced, I think, in
19 2003.

20 Q. Was that September of 2003?

21 A. That sounds in the right timeframe.

22 Q. And at that time, Steam was patching Valve's
23 multiplayer games, for instance?

24 A. No. We were patching our games through other
25 means.

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1 Q. What was Steam doing when it was released
2 initially in September of 2003?

3 A. God, you really should talk to somebody that
4 worked on the Steam team. There may have been -- it may
5 have been a way for people to get updates. It's
6 possible updates were still being distributed through
7 old methods. I just really think you'd have to talk to
8 somebody on the Steam team to go back that far and kind
9 of talk in detail about what features under the name
10 Steam were available.

11 Q. Like who?

12 A. Well, I would probably talk to -- maybe John
13 Cook was working on Steam back then. Maybe Erik Johnson
14 might recall going back that far.

15 Q. Do you have an idea of what Steam was doing --
16 what the software was doing between September of 2003
17 and the first third-party published -- distributed
18 through Steam in 2005?

19 MR. CASPER: Object to the form of the
20 question.

21 A. What it was doing?

22 Q. (BY MR. SIEBERT) Yeah. What was its purpose?

23 MR. CASPER: Object to the form of the
24 question.

25 A. What was Steam's purpose?

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1 I don't know. I'm not even sure I understand
2 the question.

3 Q. Is Valve in the habit of developing software
4 that nobody will use, that doesn't do anything?

5 A. That has happened.

6 Q. Can you give me an instance when?

7 A. Games that we never shipped.

8 Q. But the purpose of a game that never was
9 shipped is hopefully to ship it at some point; right?

10 A. Yeah. Theoretically, yep.

11 Q. Okay. Steam was released in September of
12 2003; right?

13 A. Yep.

14 Q. It was doing something at that time; right?

15 A. Yep.

16 Q. You have no idea what it was doing at that
17 time?

18 MR. CASPER: Object to the form of the
19 question.

20 A. Yep. Like I said, you know, you -- if you
21 want to know -- you want to talk in detail and try to
22 figure out going back 20 years exactly which thing Steam
23 was doing, probably the best person to talk to would be
24 an engineer working on Steam.

25 You've referenced game updating. It probably

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1 was one of the things that Steam was doing. And I think
2 around that time -- I don't know if it was in 2003, but
3 there was a game Counter-Strike, I think, Condition Zero
4 that we might have shipped on Steam.

5 Q. (BY MR. SIEBERT) Counter-Strike is a
6 multiplayer game; right?

7 A. Yeah.

8 Q. Were Valve's multiplayer games hosted at that
9 time on something called the World Opponent Network?

10 A. No.

11 Q. Where were they hosted?

12 A. Well, they weren't -- by "hosted" -- what do
13 you mean by "hosted"?

14 Q. How was Valve patching or updating multiplayer
15 games such as Counter-Strike?

16 A. Oh, like where were we putting the patches so
17 that users could get them?

18 What timeframe are we talking about? 2003 or
19 before 2003?

20 Q. 2003, 2004.

21 A. Well, it would be best to talk to somebody
22 that was working on those patches and distributing those
23 patches. But, generally, you know, in the early days,
24 people would go to FTP download sites. So patches would
25 be distributed via a number of places. We would put the

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1 patch out there, people would put it up on their
2 download sites and people would download it.

3 I don't know if -- what things you may have
4 been able to do and update via Steam with -- at that
5 time, because it was a long time ago, but Steam now
6 definitely does updates for games and has done it for a
7 long time.

8 I just can't remember back in 2003, you know,
9 which vehicles we were using to do updates. Steam may
10 have been one of them. FTP sites and download sites we
11 might have continued to use. It's just hard to remember
12 that long time ago.

13 Q. The International is coming up; right?

14 A. Yep.

15 Q. That's a Dota tournament?

16 A. Yeah.

17 Q. It's here in Seattle?

18 A. It is.

19 Q. Is Mr. Newell attending that?

20 A. I don't know. He likes to attend it.

21 Q. He likes to attend it, you said?

22 A. Yeah. He's a big fan.

23 Q. He likes Dota?

24 A. He does.

25 Q. Does he play?

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1 A. He does.

2 Q. You would expect him to attend, given that he
3 likes it?

4 A. I don't -- I don't know. I really don't know
5 what his plans are. I haven't talked to him about it.

6 Q. Are you going?

7 A. I am going to go.

8 Q. Who's your favorite hero?

9 A. I don't have a favorite hero.

10 Do you want some tickets?

11 Q. Not particularly.

12 A. You're dropping hints.

13 Q. Mr. Lynch, was -- do you know whether or not
14 Valve was making patches available for games such as
15 Counter-Strike through the World Opponent Network?

16 A. No.

17 Q. You don't know one way or the other?

18 A. We were not.

19 Q. You don't believe you were?

20 A. No.

21 Q. At some point in 2005, Valve began
22 distributing third-party games through Steam; is that
23 right?

24 A. Yeah, that's what I recall.

25 Q. What was the first game?

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1 A. I believe it was Rag Doll Kung Fu.

2

3

4

5

6 Q. Why did Valve begin distributing third-party
7 games through Steam?

8 A. Because the work that we had done with Steam
9 we thought could be valuable to third parties, other
10 than ourself. And that customers would enjoy it as
11 another alternative to buy games, and that -- we thought
12 there were a bunch of advantages for developers and
13 customers with online distribution versus traditional
14 packaged goods distribution.

15 Q. You mentioned the difference between online
16 distribution and traditional packaged goods
17 distribution.

18 What are those differences?

19 A. Well, there's -- there's lots of them.
20 There -- for one, you know, packaged goods distribution
21 is limited in terms of shelf space because, you know,
22 they're physical items that take up space.

23 You have to put the game on a piece of
24 plastic, CD-ROM, DVD, and then you've got to put it in a
25 box and make it in a factory. And then you have to ship

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1 Q. And you reply to this; right?

2 A. Let me see.

3 Yes.

4 Q. You write, "I think we should write a preamble
5 directly to developers themselves that goes along with
6 the notice of the amendment."

7 You see that?

8 A. Yes.

9 Q. Were you imagining here direct outreach
10 between Valve employees and specific developers?

11 A. I think that is going to go to all Steam
12 partners with an existing distribution agreement.

13 Q. Do you see later in that paragraph where you
14 write, "I think it should be tailored as a private
15 communication (with the knowledge that it will likely be
16 publicized)"?

17 A. Yes.

18 Q. Okay. Was the communication that you were
19 contemplating a private one?

20 A. Well, it was going to somebody that had a
21 Steam Distribution Agreement versus being, you know,
22 posted on our website, but --

23 Q. Did you contemplate this going to all
24 publishers and developers?

25 A. As I recall, it was going to be a note that

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1 was going to go along with an amendment to all --
2 everybody that had a Steam Distribution Agreement at the
3 time.

4 Q. Do you see in the second paragraph where you
5 write, "If we're concerned about shaping messaging on
6 the topic because it will eventually be discussed
7 publicly, I'd do that with a bunch of call downs to
8 developers we believe are opinion leaders in the space
9 (maybe do a batch via email with a draft message
10 followed by a call and then test how it was received
11 before rolling it out to the entire audience)."

12 Do you see that?

13 A. Yes.

14 Q. Did that happen?

15 A. I am guessing that, yeah, they would have
16 reached out to a bunch of developers to talk about it,
17 tell them what was coming, yeah.

18 Q. And this would have been in late November of
19 2018 and early December of 2018?

20 A. I don't recall who it might have been
21 discussed with earlier. Possibly earlier, but, yeah,
22 definitely some of those conversations about the change
23 would have happened in November and December of 2018.

24 Q. There were some developers or publishers who
25 were informed before this?

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1 A. Possibly, yeah.

2 Q. Who would those people have been?

3 MR. CASPER: Object to the form of the
4 question.

5 A. Off the top of my head, I don't know.

6 Q. (BY MR. SIEBERT) You go on to write,
7 "Thinking of those that are thought leaders and will
8 talk online or with press folks. They will be most
9 convincing. We'll sound self-serving."

10 Do you see that?

11 A. Uh-huh.

12 Q. By "We'll sound self-serving," you mean Valve
13 will sound self-serving; right? That's the "we" there?

14 A. Yeah.

15 Q. Why did you think Valve would be
16 self-serving -- or sound self-serving if they announced
17 the revenue share?

18 A. I don't think it was about announcing the
19 revenue share.

20 Q. What was it about?

21 A. I assume it was about all the messaging around
22 the revenue share, why we were doing it, what our goals
23 were, those kinds of things.

24 Q. What were the goals?

25 A. Well, one, the goals were to, you know, have a

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1 better revenue share for games that hit those certain
2 tiers, to make sure that large games and large audiences
3 were incented to be on Steam because there is high value
4 to them being on Steam for everybody that's in the Steam
5 ecosystem. You know, developers, other developers,
6 customers, et cetera. Those are some of the goals.

7 Q. Was one of the goals to bring back certain
8 developers or publishers who had stopped publishing
9 games on Steam?

10 A. Yes. Yeah.

11 Q. Did some of those developers or publishers
12 also sign exclusive deals with Epic later in time?

13 A. I don't know. Possibly, yes.

14 Q. Division 2, for instance, signed an exclusive
15 deal with Epic?

16 A. I think they did, yeah.

17 Q. Who publishes that?

18 A. If I remember, that was Ubisoft.

19 Q. Why was it important to get the messaging out
20 prior to Epic's announcement?

21 A. Well, because we had put so much thought into
22 doing this and how we were doing it and why we were
23 doing it. And the -- you know, the goal was to -- that
24 was an important part of, you know, really what was a
25 major change, and we didn't want that to get lost.

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1 And it -- it would have weirdly looked like it
2 was for a different reason than all of the other reasons
3 that we had, you know -- all the other reasons why we
4 had decided to do it, which at the time I don't think we
5 knew that Epic was planning to release a store.

6 Q. However, before you announced the revenue
7 share change, you did learn that Epic would be releasing
8 a store?

9 A. I think we did. Yeah, I think there were sort
10 of, you know, bubblings but, you know, I don't think
11 they had told us. But we had gotten more and more
12 confident that Epic was going to announce a new store,
13 yeah.

14 Q. And this was in the same timeframe that the
15 revenue share was being discussed?

16 A. Tim might have even told us shortly before,
17 but, yeah.

18 Q. You said "Tim might have even told us shortly
19 before"?

20 A. Yeah.

21 Q. You're referring to Tim Sweeney?

22 A. Yeah.

23 Q. And that's the CEO of Epic?

24 A. Yes.

25 Q. Higher up in response to your email is an

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1 email from Sean Vanaman.

2 A. Yes.

3 Q. Mr. Vanaman states in his email,
4 "Nevertheless, if they're announcing 80/20 across the
5 board then our timing isn't important and PR doesn't
6 seem valuable."

7 Do you see that?

8 A. Let's see. Sorry.

9 Doesn't -- where does he say that? I looked
10 at the right page.

11 Q. Bates ending in 683, second paragraph.

12 A. Oh, okay.

13 (Witness reading to himself.)

14 Yes.

15 Q. "They're" in this sentence is referring to
16 Epic; right?

17 A. Yes, I -- yeah. Appears to, yep.

18 Q. Mr. Vanaman is suggesting that Epic's
19 announcement of 80/20 would make your announcement less
20 valuable?

21 A. No. I don't know what you mean.

22 Q. He says, "our timing isn't important and PR
23 doesn't seem valuable"; right?

24 A. Yes.

25 Q. And that's PR relating to the new Valve